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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/557,358	11/17/2005	Hisatomo Ohki	063137-0102	8951

22428 7590 05/04/2007
FOLEY AND LARDNER LLP
SUITE 500
3000 K STREET NW
WASHINGTON, DC 20007

EXAMINER

DOUGLAS, STEVEN O

ART UNIT	PAPER NUMBER
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3771

MAIL DATE	DELIVERY MODE
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05/04/2007

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary	Application No.	Applicant(s)	
	10/557,358	OHKI ET AL.	
	Examiner	Art Unit	
	Steven O. Douglas	3771	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 17 November 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-8 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-8 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date <u>11172005</u> | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Specification

The abstract of the disclosure is objected to because it contains too many words (i.e. more than 150 words). Correction is required. See MPEP § 608.01(b).

Claim Objections

Claims 1-4 are objected to because of the following informalities: "rage" (claim 1, line 8; claim 2, line 4; claim 3, line 3; and claim 4, line 4) should be - - range - -. Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 5-8 are rejected under 35 U.S.C. 102(b) as being anticipated by Coccozza'761.

The Coccozza reference discloses a powdered medicament inhalation applicator comprising a body 21 sized to hold a medicine powder container (not shown) and a detachable mouthpiece 22 that appear to be sized and capable of delivering or admitting medicament from a vicinity of gustatory organs to a deep part of the oral cavity, as claimed.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-4 and 5-7 are rejected under 35 U.S.C. 103(a) as being unpatentable over Coccozza'761.

The Coccozza reference discloses a powdered medicament inhalation applicator (*supra*), but does not *explicitly* disclose the length of the mouthpiece being set in a range to admit medicament from a vicinity of gustatory organs to a deep part of the oral cavity (i.e. this rejection is made alternatively if Applicant takes issue over the rejection under 35 USC 102 above, see claims 5-7), 30mm to 80mm in length (claim 1), 40mm-80mm in length (claim 2), 50mm to 80mm in length (claim 3) or 60mm to 80mm in length (claim 4). It would have been obvious to one of ordinary skill in the art at the time the invention was made to have the length of the mouthpiece being set in a range (*if not already*) to admit medicament from a vicinity of gustatory organs to a deep part of the oral cavity (claims 5-7), of 30mm to 80mm in length (claim 1), of 40mm-80mm in length (claim 2), of 50mm to 80mm in length (claim 3), or of 60mm to 80mm in length (claim 4) , since it has been held that where the general conditions of a claim are known in the prior art finding the optimum or workable ranges involves only routine skill in the art.

Art Unit: 3771

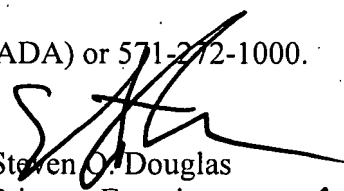
Conclusion

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. The Elliott et al., Nilson, Ohki'505 et al., and Niccolai references pertain to other inhalation-type applicators with associated mouthpieces.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Steven O. Douglas whose telephone number is (571) 272-4885. The examiner can normally be reached on Mon-Thurs 6:30-5:00.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Justine Yu can be reached on (571) 272-4835. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.


Steven O. Douglas
Primary Examiner
Art Unit 3771

4/30/07

SD
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